

Automated Commercial Environment—Requirements Recommendation

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Subject Matter:	<u>Importer/Exporter/Appeals Process</u>		

Requirement

Partnering Government Agencies (PGAs) who participate in the importer application, approval, amendment and removal processes for any importer/exporter expedited processes and/or benefits programs that have been or may be implemented must also participate on an approved process for importer/exporter appeals to agency decisions regarding those processes or programs. The term “expedited” in this context may be defined as reduced scrutiny in CBP or PGAs internal risk management processes and/or may also translate directly into faster physical clearance of shipments at the border where that is feasible.

It is understood that for a PGA that has cross border clearance accountabilities to participate in the ACE system they must already have in place a defined internal risk management process for cross border shipments. They must employ risk management principles to identify, approve and create highly compliant accounts and they must move towards an account based management system to allow resources to be designated towards the unknown, higher risk shipments and facilitate movement of legitimate shipments from known entities. This is a critical aspect to the concept of expedited clearance programs.

It is recommended that in cases where an application for expedited import/export processes and/or benefits programs (FAST, CTPAT) is denied, the responsible agency will provide written notice to the applicant that will clearly state the reason(s) for denial and advise the applicant of any administrative appeal rights and/or other options available to them for rectifying the denial.

It is recommended that the agency(s) provide for two types of revocations:

- 1) Proposed revocations: to be used when a proposal to revoke status is a result of compliance concerns that may warrant the removal of a participant or the removal of a specific supply chain lane in the near future. The notification would effectively serve as a warning to the trade participant so that the problem may be addressed in concert with the respective agency and removal may be avoided.
- 2) Immediate revocations: to be used when a proposal to revoke status is the result of serious compliance violations where immediate revocation from any or all expedited processes and/or benefits programs that are currently implemented and/or any specific supply chain lanes under those programs is warranted. The revoking agency must provide written notification to the trade participant within 10 working days of the revocation.

It is recommended that each agency participating in the ACE program must establish an appropriate appeals process that will be followed when an application is denied or a participant is removed. The trade should be allowed at least 60 days to file the appeal. Each agency would then have 60 days to respond to the appeal. A two step appeals process is recommended. The first appeal would be filed at the agency field office that initiated the adverse action. This office may then overturn the decision if sufficient explanation, evidence or reasoning is provided by the trade to clarify possible misunderstandings or errors. The next level of appeal would be provided at a headquarters level. Each participating agency must establish a defined communications process to handle appeals at this level in the event of disagreement or discrepancies at the field office level.

NEXT STEPS: ITDS Committee members will follow up to determine the future vision of the CBP in regards to integration of PGAs and obtaining multiple PGA approvals for expedited status and/or benefits programs (e.g., CTPAT, FAST). As needed, draft a proposal for a standard procedure (or standard set of guidelines) for a workable appeals process at both a field office and headquarters level that could be used by any participating government agency that has this internal structure. Committee members will also define a mechanism that will allow trade to quickly address any problems with the expedited import/export process.

Business Need

Whenever a program is developed that involves participant pre-approvals and therefore denials and/or revocations, it is evident that an appeals process must be developed in order to address disagreements and discrepancies between the applicants and approval agencies. Trade participants must have due process procedures to address those potential disagreements.

Technical Need

Requires both the PGA and the importer/exporter's participation in the ACE system. Potential system upgrades and/or changes in the PGA's existing internal systems to accommodate their particular requirements for any appeals process that is implemented.

Benefits

- Due process for trade: an appeals process provides an avenue for the trade to open a dialogue with the agency when an adverse decision is made or other disagreements occur related to an application status. Provides the PGA with a standard due process for adverse decisions.
- Compliance: The trade will have a general understanding as to why the denial, removal or other adverse decision was made and what they must do to rectify the problem. Can be used as an avenue for the PGA to coordinate with the trade to increase that entity's compliance levels. Identifies specific concerns requiring resolution.
- Uniformity: There will be one uniform method for appealing decisions of multiple agencies participating in ACE where possible.

Risks

Difficulties with developing a standard appeals process that is workable for multiple government agencies.

Related Subcommittees

Accounts
Entry
Legal Policy

Priority: Critical ☐ High ☒ ☒ Medium ☐ Low ☐